

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In re Applications of )

READING BROADCASTING, INC. )

For Renewal of License of )  
Station WTVE(TV), Channel 51 )  
Reading, Pennsylvania )

and )

ADAMS COMMUNICATIONS CORPOATION )

For Construction Permit for a New )  
Television Station to Operate on )  
Channel 51, Reading, Pennsylvania )

MM Docket No. 99-153

File No. BPCT-940407KF

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OCT 23 2000  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

File No. BPCT-940630KG

TO: Magalie Roman Salas, Secretary  
for direction to  
The Honorable Richard L. Sippel  
Administrative Law Judge

**CONSOLIDATED REPLY  
OF ADAMS COMMUNICATIONS CORPORATION  
TO PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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October 23, 2000

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## SUMMARY

With respect to the Phase II Issue, the record evidence clearly establishes that Mr. Parker failed by a long shot to satisfy the longstanding, oft-affirmed standards of candor, honesty and forthrightness which the Commission has imposed for more than 50 years, and which have been reaffirmed by the Court of Appeals at least twice in the last several months. *See Schoenbohm v. FCC*, 204 F.3d 243 (D.C. Cir. 2000); *Contemporary Media, Inc. v. FCC*, 214 F.3d 187 (D.C. Cir. 2000). Even the Bureau acknowledges that Mr. Parker engaged in deceit upon the Commission in the October, 1992 Dallas Amendment. And in its determination that Mr. Parker's testimony in this hearing about the Dallas Amendment was incredible, the Bureau tacitly acknowledges that Mr. Parker is continuing his established course of less than truthful misconduct. While the Bureau concludes that that misconduct should not be deemed disqualifying as to RBI, the fact is that Mr. Parker is RBI: he wields *de facto* if not *de jure* corporate control and he has (as the Bureau also acknowledges) signed most of RBI's submissions to the Commission. To the extent that RBI has communicated information to the Commission, those communications have come through Mr. Parker. So if Mr. Parker has been shown to be less than candid, forthright and honest - as the record does indeed show -- then RBI is infected with the same disqualifying trait.

By contrast, Adams is fully qualified to be a licensee. In its PFC RBI appears to have veered from the course which it initially had seemed to have plotted relative to the Phase III Issue. When RBI first sought the addition of the Phase III Issue, RBI seemed to be alleging that Adams had filed its application for the purpose of settlement. However, the

record evidence clearly does not support that position. So RBI now appears to be arguing primarily that Adams filed its application for the sole or primary purpose of ridding the airwaves of home shopping programming, and that filing for such a purpose constitutes an abuse of the comparative renewal process.

But RBI's new-found argument is flatly wrong. An abuse of process occurs when a party invokes a process "to achieve a result which that process, procedure, or rule was not designed or intended to achieve". *Comparative Renewal Process*, 4 FCC Rcd 4780, 4793, n. 3 (1989). It is well-established that one of the "intended goals" of the comparative renewal process is to "identify[ ] deficiencies of incumbent licensees." *Id.* at 4781 (¶11). Thus, even if Adams's sole purpose were to bring the public deficiencies of a home shopping licensee to light -- and Adams hastens to note that Adams's purpose here is to acquire for itself the Channel 51, Reading, television authorization -- that purpose would be squarely within the contemplated purpose of the comparative renewal process.

Even if RBI were found, *arguendo*, to be basically qualified, Adams still prevails under the comparative issue. Adams enjoys a decisionally significant preference for diversification and an additional preference for comparative coverage. It suffers no demerits. RBI, on the other hand, has no comparative preferences at all. Its public service programming performance was so meager as to be as to be imperceptible. It consisted for the most part of nothing but PSA's, with a few political programs -- cadged for free from politicians in Harrisburg, without regard to their content -- thrown in at the end of the license term in an effort *not* to serve the public, but rather to increase the station's cable carriage. The record reflects no investment by RBI in public service programming; to the contrary,

there is substantial evidence that the station avoided such programming.

RBI's performance during the license term is further diminished by numerous reporting violations and Mr. Parker's misconduct.

When all is said and done, this case presents the Commission with a clear and easy choice. Adams, basically qualified and ready to construct and operate the station in the public interest. And RBI, whose willingness and ability to serve the public has been shown on this record to be effectively non-existent. Moreover, RBI suffers from the chronic inability or unwillingness of its controlling principal, Mr. Parker, to be honest and forthcoming as required by the Commission.

In short, RBI is disqualified. Adams is qualified. Adams's application must be granted.

And even if RBI is deemed qualified, Adams must prevail under the comparative issue. Again, Adams's application must be granted.

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**CONSOLIDATED REPLY OF ADAMS COMMUNICATIONS CORPORATION  
TO PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Adams Communications Corporation ("Adams") hereby replies to the "Proposed Findings of Fact and Conclusions of Law of Reading Broadcasting, Inc." ("RBI PFC") and the "Enforcement Bureau's Proposed Findings of Fact and Conclusions of Law" ("Bureau PFC").



A. **STANDARD COMPARATIVE RENEWAL ISSUE**

(1) **COMPARATIVE COVERAGE**

2. According to the RBI PFC, Adams's proposed coverage should be compared to the coverage which would result if RBI were ever to construct the facilities authorized in a construction permit which RBI has held, but failed to implement, for more than five years. RBI PFC at 5, 84. As set out in Adams's PFC, RBI cannot be credited with coverage which might be realized with the facilities specified in RBI's construction permit. Adams PFC at 224. The record evidence (which RBI chooses to ignore) demonstrates that there is virtually no likelihood that those facilities will ever be implemented. *Id.* To the extent that RBI's dominant principal, Micheal Parker, attempted to paint an optimistic picture of RBI's ability ever to construct, the record demonstrates that that attempt was disingenuous at best. Adams PFC at 10-13.

3. As a result, RBI cannot claim any signal coverage advantage arising from the long-outstanding-but-never-constructed construction permit.<sup>1/</sup> To the extent that any comparative preference is to be awarded for comparative coverage (as both RBI and the Bureau recommend, RBI PFC at 84, Bureau PFC at 82), that preference must be awarded to Adams, whose proposed signal would serve 33% more people than are now served by RBI. *See, e.g.*, Bureau PFC at 82.

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<sup>1/</sup> *See* RBI's Prehearing Brief on Scope of Issues, filed July 22, 1999, at 7 ("a party should not be entitled to claim a comparative coverage benefit if separate evidence indicates that the applicant's proposed facilities won't be built as proposed.").

(2) **DIVERSIFICATION OF MEDIA OUTLETS**

4. Both RBI and the Bureau acknowledge that Adams is entitled to a comparative preference under the "diversification" criterion. RBI PFC at 84; Bureau PFC at 81. Both RBI and the Bureau assert that that preference should be deemed "slight". *Id.* The Commission has clearly held that, where two competing applicants "differ in that one has media interests outside of the market to be served", the multiple owner must be accorded a "decisionally significant" comparative disadvantage. *Isis Broadcasting Group*, 5 FCC Rcd 7040, 7041 (¶7) (1993). <sup>2/</sup> Thus, Adams is entitled to a "decisionally significant" preference under this criterion.

(3) **LOCAL RESIDENCE/CIVIC ACTIVITIES/BROADCAST EXPERIENCE**

5. While RBI asserts that RBI is entitled to some comparative preference as a result of the local residence, civic activities and broadcast experience of its principals, RBI PFC at 7-17, 85-86, precisely the opposite is true.

6. In the earliest pre-hearing stage of this proceeding, RBI argued that local residence, civic activities and broadcast experience could be considered notwithstanding the holding in *Bechtel v. FCC* ("*Bechtel II*"), 10 F.3d 875 (D.C. Cir. 1993) because those factors are "verifiable" and not "predictive". *See Memorandum Opinion and*

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<sup>2/</sup> RBI also seems to suggest, without authority, that the comparative disadvantage arising from Mr. Parker's other broadcast interests should be reduced "because Mr. Parker holds less than a 50% interest in [RBI]." RBI PFC at 84. To suggest that Mr. Parker does not control RBI is to ignore reality. But regardless of the level of his interest, Mr. Parker's ownership in other broadcast facilities is attributable to RBI. As a result, RBI is charged with such ownership, while Adams has no other attributable media interests.

*Order*, FCC 99M-47, released August 9, 1999 at 2, ¶6. Despite initial objection, Adams ultimately concurred with RBI's approach:

. . . The "integration" policy was a flawed mechanism by which to translate local ownership and involvement of local owners into a measure of the likelihood of effectuation of programs in the public interest. No such surrogate mechanism is needed here. During the relevant license term, RBI has made a record from which the actual impact of its local owners and their civic involvement -- on the likelihood of effectuation of programs in the public interest -- can, *indeed*, be verified.

If the evidence submitted by the parties and tested on cross examination and in rebuttal demonstrates that RBI's local ownership failed to see to it that the station provided substantial local programs, including a failure to provide substantial local news or substantial local public affairs programs, the record will establish that RBI's local ownership did not, in fact, effectuate programs in the public interest. Conversely, if the record demonstrates substantial performance by the station during the license term, the record may very well reflect that RBI's local ownership contributed to that result. Either way, the impact of RBI's local ownership will be verified by the facts of actual practice, not predictive speculation.

Adams's Response to RBI's Prehearing Brief on Scope of Issues, filed July 29, 1999, at 3-4 (emphasis in original).

7. In preliminarily announcing the scope of the comparative issue, the Presiding Judge acknowledged and endorsed this emphasis on verifiability and the corresponding aversion to evidence which was purely "predictive" in nature. *See Memorandum Opinion and Order*, FCC 99M-47, released August 9, 1999 at 2, ¶¶5, 6.

8. Thus, the mere fact that some of RBI's principals may be local residents, or may have engaged in some civic activities, or may have some broadcast experience <sup>3/</sup>,

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<sup>3/</sup> As set forth in Adams's PFC at 16-22, the local residence, civic activities and broadcast experience which may in any event be legitimately claimed by RBI are limited. Moreover, the cases cited in the RBI PFC in support of RBI's claimed comparative

(continued...)

is material only to the extent that those factors can be shown, or verified, to have had any impact on the station's public service programming during the license term. Absent such showing, or verification, those factors would be nothing more than possibly predictive. That is, absent historical verification, it would be anybody's guess whether or not those factors might ultimately influence any future performance. That is precisely the type of unfounded, predictive decisionmaking which led to the demise of the integration criterion in *Bechtel II*.

9. The record of this proceeding does provide verification of the impact -- or, more accurately, total lack of impact -- which the local residence, civic activities and broadcast experience of RBI's principals had on the programming of Station WTVE(TV). As discussed in Adams's PFC at 16-31 and 224-226, the record reveals that *NONE* of RBI's shareholders took *ANY* steps to assure public service programming responsive to local needs and interests. That being the case, RBI cannot claim any comparative preference here on the basis of local residence, civic activities or broadcast experience.

10. To the contrary, RBI's failure to allow its claimed local residence, civic activities and broadcast experience to influence the station's programming can and should logically warrant a substantial comparative demerit. In determining which of two competing applicants will better serve the public interest, the Presiding Judge cannot

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<sup>3/</sup>(...continued)

preferences for local residence, civic activities and broadcast experience all pre-date *Bechtel II*. See RBI PFC at 85-86, citing *Edward F. and Pamela J. Levine*, 8 FCC Rcd 8401 (1993); *Gloria Bell Byrd*, 8 FCC Rcd 7124 (1993); and *Harry S. McMurray*, 8 FCC Rcd 8554 (1993). They therefore present integration-based analysis which is inapposite here.

ignore the fact that one of those two competing applicants has already had a chance to serve the public interest and has failed to do so. In this case, RBI's historical failure to serve the public is verifiable.

(4) **RENEWAL EXPECTANCY**

(a) ***PROGRAMMING***

11. As RBI correctly points out at page 87 of its PFC, home shopping television stations, just like all other television stations, are obligated to provide public affairs programming responsive to local issues. But as demonstrated in Adams's PFC, RBI has utterly failed to satisfy that obligation.

(a1) ***Quantitative Analysis - PSA's v. Programs***

12. Quantitatively, RBI provided virtually no issue-oriented nonentertainment programs until the very end of the license term, at which time it slapped some shows, obtained for free from state legislators, on the air at odd times without apparent regard for their content. *See, e.g., Adams PFC at 34-36, 42-47.* RBI broadcast those legislators' programs ***NOT*** to respond to any ascertained needs or interests, but rather in an effort to differentiate the station from cable-only home shopping channels and thereby to make the station potentially more attractive to cable operators. *See Adams PFC at 45-47.*

13. In its PFC, RBI asserts that it broadcast substantial numbers of issue-responsive "programs" at all times during the license term. RBI PFC at, *e.g., 23-27, 34-35.* That assertion is inconsistent with RBI's own documentation prepared

contemporaneously with the broadcast of the "programs" in question. In fact, the "public service programming" described by RBI at pages 24-27 of its PFC consisted of nothing more than public service announcements ("PSA's"). This is evidenced both by the station's logs, which were prepared prior to and contemporaneously with the broadcasts, and by the station's affidavits of broadcast, which were prepared shortly after the broadcasts. *See, e.g.,* Adams PFC at 51-52.<sup>4/</sup> In the case of each of the items listed at pages 24-27 of its PFC which RBI now would characterize as "programs", the station-prepared documentation demonstrates that the station viewed those items to be PSA's when they were broadcast.

14. The record contains no evidence at all to support RBI's claim that material officially logged as PSA's at the time it was broadcast has since somehow matured into full-fledged "programs". In fact, the person who apparently made the determination that PSA's could be deemed "programs" for the purposes of this proceeding was *NOT* a station employee with any familiarity at all with the broadcasts. Rather, that determination appears to have been made in late 1999, in preparation for this hearing, by

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<sup>4/</sup> The only possible exception is "Around Our Town", which is described in RBI PFC at 27. Adams has been unable to locate any reference to "Around Our Town" in any log or affidavit in the record. The only reference to "Around Our Town" we have been able to find appears in the Issues/Programs List for the Second Quarter of 1990, where it is described as "focus[ing] on topics relating to the local environment and community events, such as OPENING OF TROUT SEASON, SCENIC RIVER DAYS, and a piece on the ST. JOSEPH HOSPITAL. Each segment ran 2-3 minutes". RBI Exh. 8, Tab F, page 5. From that description, it appears that "Around Our Town" was a PSA similar to the other PSA's which RBI seeks to recharacterize as "programs". But even if "Around Our Town" had in fact been a hard-hitting, in-depth public affairs program, the record indicates that it was broadcast, at most, during only one quarter in 1990, after which it appears to have been abandoned by RBI.

a paralegal working for RBI's counsel. *See* Adams PFC at 38-39.

15. RBI's exercise in *post hoc* revisionism is understandable. The Commission has long held that "the use of PSAs should not be a broadcaster's primary method for responding to ascertained needs." *Public Service Announcements*, 81 FCC2d 346 (¶47) (1980). *See also* *Normandy Broadcasting Corp.*, 8 FCC Rcd 1 (ALJ Sippel 1992). For the vast majority of the 1989-1994 license term, PSA's were not just RBI's primary method, they were its **EXCLUSIVE** method of supposedly responding to ascertained needs. Having consciously chosen to take this approach -- and the record clearly establishes that this was a conscious decision by RBI, *see, e.g.*, Adams PFC at 57-60 -- RBI cannot now avoid the adverse consequences of that choice by suddenly re-casting "PSA's" as "programs". <sup>5/</sup>

16. As demonstrated by Adams's composite week analysis of RBI's programming, RBI broadcast virtually no non-entertainment programs at all throughout the license term. *See, e.g.*, Adams PFC at 32-38. RBI pooh-poohs Adams's composite week analysis in a brief footnote. RBI PFC at 90, n. 15. RBI correctly observes that, for example, Adams's analysis for October 1, 1993 "shows zero minutes of non-entertainment programs". *Id.* RBI then challenges Adams's analysis, claiming that the

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<sup>5/</sup> RBI's revisionism is also inconsistent with the Commission's understanding of the term "program". While that term has not been defined in any rule or regulation which Adams has been able to locate, the Commission has indicated that "programs" or "program-length" presentations are generally 15 to 30 minutes long. *Cf. Policies and Rules Concerning Children's Television Programming*, 10 FCC Rcd 6308, 6327 (1995) ("substantial length" programs said to be "15 or 30 minutes"). The items which RBI claims, at pages 24-27 of its PFC, to have been "programs" were generally two, and in no case more than four, minutes long.

program log for October 1, 1993 "shows that WTVE broadcast 47.5 minutes of 2-3 minute public service segments and 41 minutes of PSAs." *Id.*

17. RBI is wrong. In fact, the log for October 1, 1993 shows a total of 88.5 minutes of scheduled <sup>6/</sup> *PSA*'s and no non-entertainment programs at all. For the Presiding Judge's convenience, a listing of all of those *PSA*'s is included as Attachment A hereto, so that the Court may verify the correctness of Adams's analysis. Adams included with its programming analysis copies of the program logs on which Adams's analysis was based specifically so that the accuracy of Adams's analysis could be independently confirmed. The October 1, 1993 program log may be found at Adams Exh. 7, pp. 3-12.

18. By contrast, RBI has offered no evidentiary basis at all for its claim that items repeatedly identified as *PSA*'s by RBI's own employees in RBI's own official documents can or should be treated as anything but *PSA*'s for purposes of this hearing. While RBI has chosen not to introduce copies of its program logs, it *has* entered into evidence reams upon reams of affidavits of broadcast. *See* RBI Exh. 8, Tabs C-X. But as noted at, *e.g.*, Adams PFC at 52, those affidavits contradict RBI's claims. RBI's affidavits all expressly identify as *PSA*'s the items which RBI now claims, at RBI PFC 24-27, to have been programs. *See* Adams PFC at 52.

19. Accordingly, when RBI asserts that Adams's programming analysis is entitled to no weight, RBI PFC at 90, n. 15, RBI has it exactly backwards: it is RBI's

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<sup>6/</sup> According to the log, the station was off the air for several hours on October 1, 1993. *See* Adams Exh. 7, pages 3, 5-6. As a result, *PSA*'s which had been scheduled for broadcast during that off-air period were not in fact aired.



analysis which is contradicted by the documentary evidence, which is not supported by any evidence, and which as a result is entitled to no weight.

(a2) *Qualitative Analysis*

20. RBI also claims that its "programs" were responsive to ascertained needs and interests. *E.g.*, RBI PFC at 88-95. This claim is not supported by the record.

21. To the very limited extent that RBI broadcast actual programs, as opposed to PSA's, those programs were not broadcast by RBI in response to any ascertained needs and interests. Prior to October, 1992, the *ONLY* "programs" regularly broadcast by RBI were religious programs: "Today with Marilyn", "Jimmy Swaggert" and "Dr. Eugene Scott". Adams PFC at 42-44. None of these programs was included by RBI in its Issues/Programs Lists describing programming supposedly responsive to ascertained community needs and interests.<sup>71</sup>

22. As noted above (and also in RBI PFC at, *e.g.*, 89), at the end of the license term RBI broadcast some programming produced by various state legislators.

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<sup>71</sup> The Swaggert and Scott programs were included in the Issues/Programs Reports for the Fourth Quarter, 1992 and the First Quarter, 1993, which listed them as responsive to the supposedly-ascertained-but-decidedly-generic need/interest of "religion". Adams Exh. 17, pp. 72-73, 313-314. "Today With Marilyn" was never included in any Issues/Programs Report. While RBI suggests at page 33, n. 6, of its PFC that "Today With Marilyn" could be deemed "public service programming", there is absolutely no record support for that suggestion. To the contrary, since RBI chose not to mention "Today With Marilyn" in *ANY* of its Issues/Programs Reports, the only reasonable inference to be drawn is that RBI itself did not believe that that program was in any way responsive to any ascertained need or interest. This inference is especially sound in view of the incredibly expansive and generic format of RBI's quarterly lists, which appear to have been prepared so as to permit RBI to include in the lists just about any programming it might have broadcast.

Arrangements for this programming were made by Daniel Bendetti, the station's Program Director. According to Mr. Bendetti, he did **NOT** obtain these political programs to respond to any ascertained needs or interests.<sup>8/</sup> Rather, he did so in the hope that providing such non-home shopping programming might enable the station to secure additional cable carriage. Tr. 1695. There is no evidence in the record that the station had any idea of what topics were covered in any of these political programs prior to their broadcast, so RBI cannot accurately claim that it was attempting to respond to any needs or interests when it broadcast them. This is tacitly confirmed by RBI's Issues/Programs Lists, in which these political programs were invariably said to have been addressed **not** to any particular or specific question(s), but rather to the ultra-generic question of "government". See RBI Exh. 8, Tab V, pages 27-29.

23. RBI also claims that it broadcast children's programming to address "children's issues identified in the station's ascertainment efforts". RBI PFC at 89. That too is inconsistent with the record. According to Mr. Bendetti, children's programs were selected **NOT** because they had any particular content, but rather because they were free, available, and "FCC-friendly". Tr. 1773-1774. Moreover, these programs -- Widget, Twinkle, Adventure Pals, etc. -- were entertainment programs, **NOT** public affairs, news

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<sup>8/</sup> In its PFC RBI describes Mr. Bendetti as "a former program director and production manager for WTVE who was fired by the station in 1998 and now works for a competing station." RBI PFC at 92. It is not clear whether this is intended to suggest that Mr. Bendetti's credibility was impeached in any way. If so, RBI's attempt is ineffective. Mr. Bendetti was a credible witness with first-hand knowledge of the matters about which he testified. His lack of apparent bias was noted by the Presiding Judge. While Mr. Bendetti was offered as a rebuttal witness by Adams, in the course of his testimony the Presiding Judge observed that Mr. Bendetti's testimony "[didn't] sound too much like rebuttal." Tr. 1694-1695.

or other informational programming. *See* Adams Exh. 2, App. B, pages 2-5.

24. At page 93 of its PFC, RBI also asserts that it broadcast "short news segments and weather announcements." But the record establishes that, during the license term, Station WTVE(TV) did not broadcast **ANY** locally-produced, locally-oriented news programs. Adams PFC at 60-67. It is not clear what RBI is referring to when it refers to "short news segments." For a brief period prior to 1990 the station did broadcast some items logged as "NF". Adams PFC at 27, n. 20. However, those do not appear to have been "news" in any meaningful sense, as the topics included such matters as "Tips for Great Looking Hair", "Fashionable Flower Bulbs", and "Flat Tire Remedy". *Id.*

25. The station also broadcast PSA's entitled "News to You", but those consisted of satellite feeds of a non-news nature which the station recorded and broadcast after adding a copyright notice. Tr. 1709. This was not news in any meaningful sense, either.

26. As for weather, it is true that the station broadcast weather PSA's several times a day on most weekdays. But it is important to recognize that for the last four years of the license term only one weather PSA was actually recorded each day. Adams PFC at 66. That PSA was then rebroadcast four times at one-hour intervals. *Id.* So the weather PSA's were never less than an hour out-of-date, and could have been as many as four or five hours out-of-date.

27. As a result of RBI's decision not to carry local news or up-to-the-minute (or even up-to-the-hour) weather, a wide variety of information seemingly important to

local residents was not covered by Station WTVE(TV). For example, no information was broadcast about: local, state or federal election returns; a redistricting plan which could have reduced the area's representation in Congress; the Gulf War; local tax and bond issues; the death of Pennsylvania Senator John Heinz; a warning about a mercury leak at a municipal sewage plant; a blizzard in 1993 which dropped two feet of snow on Reading in two days; the most powerful earthquake ever to hit the area, followed by numerous aftershocks; a second blizzard, in 1994, which shut down the city for approximately one week. Adams PFC at 63-66.

28. The record demonstrates that the public raised complaints about RBI's failure to provide news programming. Tr. 1746. RBI acknowledges that evidence in its PFC, but dismisses it because it was just an "anecdotal claim by Mr. Bendetti, a terminated WTVE employee". RBI PFC at 96. According to RBI, Mr. Bendetti's testimony was "unverifiable" and "second-hand" and entitled to "little weight compared to the first-hand testimony of WTVE's public witnesses". *Id.*

29. RBI is wrong again. First, as noted previously, Mr. Bendetti's testimony was entirely credible. Second, far from being "unverifiable", his testimony was completely verifiable through the process of cross examination. Third, RBI's reference to the "first-hand testimony of WTVE's public witnesses" is strange because NONE of those witnesses contradicted Mr. Bendetti's testimony on this point. To the contrary, ALL of RBI's public witnesses confirmed that Station WTVE(TV) provided no local

news coverage at all. *See* Adams PFC at 69-88. <sup>9/</sup>

(a3) *Scheduling of Programming*

30. In its efforts to gild its drab programming performance, RBI understandably neglects to mention that the station's programming was not scheduled in a way which enabled potentially interested viewers to see it. To the contrary, the PSA's were broadcast on a random, run-of-schedule basis. Adams PFC at 54. This appears also to have been true of the political programs broadcast at the end of the license term. *See* Adams PFC at 47-49.

31. And while RBI claims that its public service programming was not relegated to "the graveyard shift", RBI PFC at 33-34, the fact is that a substantial percentage of RBI's PSA's were routinely broadcast between Midnight and 5:00 a.m. Adams PFC at 56. Similarly, while RBI's representatives claimed that children's programming (including PSA's such as "Kids Korner") was carefully scheduled to air "when kids would be watching television", not "in the middle of the night", Tr. 598, the record establishes that such programming was routinely broadcast after 10:00 p.m. and 11:00 p.m., Adams PFC at 55-56.

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<sup>9/</sup> *Kimler Broadcasting, Inc.*, 15 FCC Rcd 7083 (1999), cited by RBI for the proposition that Mr. Bendetti's testimony should be accorded little weight, RBI PFC at 96, is inapposite. In that case a party raised allegations about certain statements allegedly made to a second party by third parties. No confirming testimony was provided by either the second or third parties, so the Commission correctly concluded that "there is no basis to determine what was actually said". *Id.* at 7088. Here, by contrast, Mr. Bendetti, who had first-hand knowledge of the complaints, was available for cross examination. His testimony concerning the complaints about the station's lack of news programming was not challenged or rebutted in any way, and it is therefore reliable evidence entitled to substantial weight.

(a4) *Summary Concerning Programming*

32. By any measure, RBI's non-entertainment programming performance during the license term was dismal. Quantitatively it was virtually non-existent. According to Adams's composite week analysis, RBI broadcast no more than 30 minutes of public affairs programs per week during the last two years of the license term, and no such programming throughout the remainder of the term. Adams PFC at 34-37. Those 30-minute programs represented considerably less than one-half of one percent of the station's broadcast hours in each of those composite weeks. Adams PFC at 36. RBI broadcast no news at all at any time during the license term.

33. Qualitatively RBI's non-entertainment programming consisted of PSA's, with a light smattering of some programming produced by state legislators thrown in at the end of the license term without regard to the subject matters covered in that programming. Since RBI did not know what subjects were covered by those political programs prior to broadcast, it cannot be said that RBI was seeking to address ascertained interests or needs thereby. Mr. Bendetti, who arranged for the broadcast of these political programs, confirmed this when he testified that those programs were broadcast in an effort to make the station more attractive to cable operators.

34. Any minimal impact which RBI's nonentertainment programming might arguably have had on the station's audience was diluted further by RBI's failure to schedule that programming in any predictable manner. The PSA's which RBI touts (albeit in the guise of "programs") were aired randomly. And even the 30-minute political programs broadcast at the end of the term were shuffled around the station's

schedule like the pea in a shell game. Adams PFC at 47-49.

35. RBI asserts, correctly, that there is no Commission requirement that television stations provide daily news programs. RBI PFC at 94. But television stations are expected to provide service to their viewers, to inform their viewers of matters of importance. Elections? RBI provided no coverage. Matters of important political and fiscal significance? RBI provided no coverage. Matters of public safety? RBI provided no coverage. Incredibly, RBI provided no coverage at all of the most powerful earthquake ever to hit Reading. While RBI is correct that television licensees are afforded a measure of discretion in determining how to address local needs and interests, that discretion can be abused. RBI's performance is just such an abuse. <sup>10/</sup>

36. Despite the overwhelming evidence of the paucity, both quantitative and qualitative, of its non-entertainment programming, RBI claims that its programming performance was "equivalent to the 'substantial service'" which resulted in "a strong renewal preference" in other comparative renewal cases. RBI PFC at 92.

37. It is difficult to take RBI seriously.

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<sup>10/</sup> At pages 86-87 of its PFC, RBI seems to argue that the Commission's determination that "home shopping stations do serve the public interest" may somehow insulate RBI from having to provide anything more than snippets of supposedly non-entertainment, issue-oriented programming. In advancing that argument, RBI conveniently ignores the fact that the Commission's *Home Shopping Report and Order*, 8 FCC Rcd 5321 (1993), on which RBI seems to place central reliance, was based in part on a showing that a prominent home shopping broadcaster aired, *in addition to hourly 4.5 minute features* entitled "In Your Interest" or "IYI, "four hours each Sunday of non-IYI nonentertainment programming". 8 FCC Rcd at 5327 (¶29). That far exceeds, quantitatively, any such programming broadcast by RBI. And qualitatively, the additional programming referred to by the Commission in the *Home Shopping Report and Order* specifically included coverage of the Gulf War and live election coverage, two areas in which RBI's programming was completely lacking. *Id.*

38. RBI claims, for example, that its performance is "equivalent" to that of the renewal applicant in *Fox Television Stations, Inc.*, 8 FCC Rcd 2361 (Rev. Bd. 1993), which according to RBI consisted of "daily 30-minute newscast, weekly 30-minute public affairs show and average of 27 PSAs per day". RBI PFC at 92. RBI has apparently misread the record of the *Fox* case. According to the Initial Decision in that case, the renewal applicant

presented live, 30-minute news broadcasts between one and three times daily. [During the latter portion of the license term, the licensee] also presented an early morning rebroadcast of the previous evening's newscast. These locally produced newscasts provided spot coverage of breaking news, sports and weather, as well as extended and ongoing coverage of ascertained problems and needs [of the service area].

*Fox Television Stations, Inc.*, 7 FCC Rcd 3801, 3807 (¶47) (ALJ 1992). In addition, the license provided special coverage of breaking news and expanded coverage of news and issues, together with numerous special programs. *Id.* at 3808-3812. Further, the licensee broadcast a variety of regularly-scheduled 30-minute and 60-minute public affairs programs daily or weekly over the course of the license term. *Id.* at 3804-3805. Obviously, RBI's parenthetical characterization of the *Fox* incumbent's performance, *i.e.*, "(daily 30-minute newscast, weekly 30-minute public affairs show and average of 27 PSAs per day)", is grossly inaccurate.

39. RBI's minimal non-entertainment programming throughout the license term is imperceptible when compared with the incumbent's actual performance in *Fox*.

40. The other precedents which RBI cites yield the same result. The stations described in *Commercial Television Stations Serving Philadelphia, Pennsylvania*, 5 FCC Rcd 3847 (1990), all provided regularly-scheduled news and/or public affairs



programming. That proceeding did not involve a comparative renewal challenge and, therefore, the record there is not as detailed as the record in, for example, *Fox*.

Nevertheless, it appears that all of the stations described in *Commercial Television Stations Serving Philadelphia, Pennsylvania* provided at least two hours, and possibly considerably more, of such regularly-scheduled non-entertainment programming. <sup>11/</sup>

41. Similarly, the radio licensee whose renewal was at issue in *Victor Broadcasting, Inc. v. FCC*, 732 F.2d 756 (D.C. Cir. 1983) aired considerably more locally-oriented non-entertainment programming than RBI acknowledges. As an initial matter, it must be noted that the standards for television licensees have historically been higher than for radio licensees. As a result, the *Victor* case is not directly apposite here. But even so, RBI's performance pales in comparison with the radio renewal applicant's in *Victor*. More than 20% of that renewal applicant's time was devoted to non-entertainment programming. *Radio Station WABZ, Inc.*, 51 R.R.2d 1507, 1525 (1982). It broadcast multiple, regularly-scheduled, locally-oriented public affairs programs, including a daily program featuring interviews with local officials, weekly public affairs series, live coverage of political events of local and regional interest, and thrice-daily agricultural news reports of interest to the local farm community. 51 R.R.2d at 1522-

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<sup>11/</sup> In its parenthetical description of this case, RBI states that "alleged issue-responsive programming [provided by the stations in question] ranged from 1 hour to 8.4 hours weekly". RBI PFC at 93. Adams is unable to find in that decision any reference to any station which broadcast only one hour per week of issue-responsive non-entertainment programming. All the programming descriptions seem to indicate considerably more such programming by all of the licensees in question. And in any event, this case did **NOT** involve any determination that any of the licensees should or should not be awarded a "renewal expectancy" for comparative purposes.